

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5209 OF 2003

IN

CRIMINAL APPEAL NO.1493 OF 2003

The State of Maharashtra	..Applicant
V/s.	
Sanjay Bapu Patil & Ors.	..Respondents

Mrs.U.V.Kejriwal, Addl.Public Prosecutor for the
applicant/State.

Ms.Madhvi Tawanandi for the Respondents.

**Coram : R.M.LODHA &
R.S.MOHITE, JJ**

Date : 22.02.2005.

PC

. Heard the learned Addl.Public Prosecutor for the
applicant/State and the learned Counsel for the
Respondents.

2. By means of this application, it is prayed that
the delay in filing Criminal Appeal against the
Judgment of acquittal dated 26.12.2002 be condoned.

3. The present respondents were put up for trial in
Sessions Case No.55 of 2002 for the offences
punishable under Section 3(1) (x) read with Section
6 of Scheduled Caste and Scheduled Tribes
(Prevention of Atrocities) Act, 1989, Section
7(1)(d) of the Protection of Civil Rights Act, 1955
and Sections 147, 148, 149, 326, 324, 323, 504, &

506 of the IPC. Upon conclusion of trial by the Judgment dated 26.12.2002 all the accused persons (present respondents) were acquitted. Aggrieved thereby the State preferred Criminal appeal on 14.12.2003. Criminal Appeal suffers from delay of about 8 months.

4. Cause shown in the application for delay is thus :-

The applicant states that the order of acquittal was passed on 26.12.2002 and certified copy of the same was applied for on 31.12.2002. The certified copy was ready on 20.01.2003 and delivered on 21.01.2003. The last date of filing the said Appeal was on 18.4.2003. The learned Public Prosecutor, Kolhapur, by his letter dated 24.2.2003 forwarded the papers to the Law and Judiciary Department, Mantralaya, Mumbai with a request to file Appeal U/s.378 of the Cri.P.C. The proposal was scrutinised by the Law and Judiciary Department, Mantralaya, Mumbai and Resolution No.A-116/03/A Branch, was passed on 19.3.2003, directing the Public Prosecutor, High Court, Appellate Side, Mumbai to prefer Appeal. The said Resolution was received by the office of Public Prosecutor, High Court, Appellate Side, Mumbai on 24.3.2003.

The Applicant states that the papers and proceedings were assigned to the concerned Additional Public Prosecutor, High Court, Mumbai for preparing the Appeal Memo. The concerned Additional Public Prosecutor was busy with admission as well as final hearing matters before the Court. There is shortage of stenographers in the office of the Public prosecutor, High Court, Appellate Side Mumbai and on some occasion the stenographers were not available because of their heavy work. The concerned Additional Public Prosecutor, after going through the record, prepared the Appeal Memo on 28-10-03. Although, the proper steps were taken to save the

Appeal from the bar of limitation, yet there has been delay of 245 days in filing the same. It is submitted that the delay in filing the criminal appeal is neither intentional nor deliberate but the same is circumstantial and deserves to be condoned in the interest of justice. If the delay is not condoned, meritorious matter will be thrown at the threshold. On the other hand, if the delay is condoned, matter would be heard on merits without causing any prejudice to the Respondents/Accused.

5. It is seen from the aforesaid facts that Public Prosecutor High Court (A.S.) Bombay received the instructions from Law & Judiciary for filing the appeal on 24.3.2003. As noticed above, the appeal was presented on 14.12.2003. The explanation that the concerned Addl.Public Prosecutor was busy with admission as well as final hearing matters is too vague and also incorrect. In between 24.3.2003 to 16.12.2003, High court had Summer vacation as well as Diwali vacation. Obviously during this period, the concerned Addl.Public Prosecutor would not be busy with admission as well as final hearing matters before the Court as set out in the application. The stereo-type explanation that there is shortage of stenographer in the office of Public Prosecutor and that on some occasion, the stenographer was not available because of the heavy work does not merit acceptance. The fact that it took more than 8 months in preparation of the appeal by the office of the Public Prosecutor (A.S.) Bombay shows total lack of diligence.

6. The facts stated in the application do not explain the delay of about 8 months.

7. In view thereof, we are constrained to dismiss the Criminal application.

8. Order accordingly.

(R.M.LODHA, J)

(R.S.MOHITE, J)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1493 OF 2003

The State of Maharashtra ..Applicant
V/s.
Sanjay Bapu Patil & Ors. ..Respondents

— — — —

Mrs.U.V.Kejriwal, Addl.Public Prosecutor for the applicant/State.

Madhuri Tawanandi for the Respondents.

— — — —

**Coram : R.M.LODHA &
R.S.MOHITE, JJ**

Date : 22.02.2005.

PC

. Criminal Appeal suffers from delay of about 8 months. The application for delay has been dismissed by us today by a separate order. Criminal Appeal being barred by time cannot be entertained and has to be dismissed.

2. Order accordingly.

(R.M. LODHA, J)

(R.S.MOHITE, J)